

**Calaveras Superior Court**  
**Friday, 10/09/2020**  
**Civil Law & Motion Calendar Tentative Ruling**  
**Hon. David M. Sanders, Courtroom #2**

9:00 AM                      20CV44604                      BHUHSD's Motion for Judgment on the Pleadings                      02/24/2020                      10/14/2020                      Case Management Conference

Ptff/Pet:      Ratkovich, Nathaniel

Atty:      Dreyer Babich Buccola Wood Campora LLP

Def/Res:      Bouncin Bins Rentals LLC; Bret Harte Grad Night Committee; Davis, Michael W

Atty:

Tentative Ruling: On February 24, 2020, plaintiff filed a complaint. On July 13, 2020, plaintiff filed a first amended complaint. On August 25, 2020, defendant District filed a Motion for Judgment on the Pleadings. District argues that plaintiff's second cause of action for products liability is barred for failure to comply with the Tort Claims Act. On September 28, 2020, plaintiff's opposition was filed.

The Court GRANTS District's Request for Judicial Notice as to Exhibits A through C pursuant to Evidence Code sections 452 and 453.

Government Code §911.2(a) provides that a "claim relating to a cause of action for death or for injury to person . . . shall be presented not later than six months after the accrual of the cause of action."

Furthermore, Government Code §945.4 provides that ". . . no suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented . . . until a written claim therefor has been presented to the public entity and has been acted upon by the board, or has been deemed to have been rejected by the board . . . ."

In this matter, plaintiff alleges in the second cause of action, First Amended Complaint, ". . . the inflatable obstacle course was negligently erected on the day of Plaintiff's accident and done contrary to proper and clear directives by the manufacturer that caused or contributed to Plaintiff's injuries . . . ." However, the amended claim for damages attached to plaintiff's tort claim does not include the above cited language. The amended tort claim states that plaintiff was encouraged by District "to participate in an unsafe, negligently monitored, negligently supervised, negligently maintained, unsecured, defective inflatable obstacle course, which included an inflatable rock wall without a harness, or any other safety measure, available." This language in the tort claim expresses a different theory of liability than the second cause of action in the first amended complaint. Essentially, it "impose[s] upon a public entity the obligation to defend a lawsuit based upon a set of facts entirely different from those first noticed." (Fall River Joint Unified School District v Superior Court (1988) 206 Cal.App.3d 431.)

The Court agrees with the District that the facts in Fall River are similar enough to this matter to be controlling. In Fall River, plaintiff initially alleged in the Tort Claim that the plaintiff was injured by a dangerous condition of a school door closing on him. However, several months after filing suit, the plaintiff added a cause of action for negligent supervision thereby changing the theories of the injury from that contained in the tort claim. The Fall River Court held that this new theory was not included in the Tort Claim and, therefore, the negligent supervision cause of action was barred. In this matter, plaintiff's new theory and facts of the second cause of action for negligence-products is barred as it violates Government Code §945.4. Therefore, District's motion for judgment on the pleadings as to the second cause of action in the first amended complaint is GRANTED.

District to prepare a formal Order pursuant to Rule 3.1312 in conformity with this ruling.